



4000-01-U

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2018-OII-0062]

RIN 1855-AA14

Final Priorities, Requirements, Definitions, and Selection Criteria--Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Acting Assistant Deputy Secretary for Innovation and Improvement announces priorities, requirements, definitions, and selection criteria for Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO grants or CMO grant program) under the Expanding Opportunity Through Quality Charter Schools Program (CSP), Catalog of Federal Domestic Assistance (CFDA) number 84.282M. We may use one or more of these priorities, requirements, definitions, and selection criteria for

competitions in fiscal year (FY) 2019 and later years. We take this action to support the replication and expansion of high-quality charter schools by charter management organizations (CMOs) throughout the Nation, particularly those that serve educationally disadvantaged students, such as students who are individuals from low-income families, students with disabilities, and English learners; and students who traditionally have been underserved by charter schools, such as Native American students and students in rural communities.

DATES: These priorities, requirements, definitions, and selection criteria are effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Allison Holte, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W243, Washington, DC 20202. Telephone: (202) 205-7726.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Summary of the Major Provisions of This Regulatory Action: We announce these final priorities, requirements, definitions, and selection criteria to achieve two main goals.

First, we seek to continue to use funds under this program to support high-quality applications from highly qualified applicants. To that end, we announce priorities, requirements, definitions, and selection criteria that encourage or require applicants to describe, for example: past successes working with academically poor-performing public schools;¹ experience operating or managing multiple charter schools; plans to expand their reach into new and diverse communities; logical connections between their proposed projects and intended outcomes for the students they propose to serve; and plans to evaluate the extent to which their proposed projects, if funded, yield intended outcomes.

Second, these final priorities, requirements, definitions, and selection criteria are designed to increase the likelihood that CMO grants support expanded high-quality educational opportunities for educationally disadvantaged students, as well as students who traditionally have been underserved by charter schools, such as Native American students and students in rural communities. Specifically, among other things, the final priorities, requirements, definitions, and selection

¹ Italicized terms are defined in the Final Definitions section of this document.

criteria enable the Department to give priority to applications that propose to: replicate or expand high-quality charter schools with an intentional focus on recruiting students from racially and socioeconomically diverse backgrounds, and maintaining racially and socioeconomically diverse student bodies, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws; serve a meaningful proportion of students who are individuals from low-income families; and replicate or expand high-quality charter schools that serve high school students, students in rural communities, and Native American students. Further, in order to meet the final requirements announced in this document, CMO applicants must describe how the schools they intend to replicate or expand would recruit and enroll educationally disadvantaged students and support such students in mastering State academic standards.

Costs and Benefits: The Department of Education (Department) believes that the benefits of this regulatory action outweigh any associated costs, which we believe would be minimal. While this action imposes cost-bearing requirements on participating CMOs, we expect that applicants will include requests for funds to cover such costs in their proposed project budgets. We believe this

regulatory action strengthens accountability for the use of Federal funds by helping to ensure that the Department awards CSP grants to CMOs that are most capable of expanding the number of high-quality charter schools available to our Nation's students. Please refer to the Regulatory Impact Analysis in this document for a more detailed discussion of costs and benefits.

Purpose of Program: The major purposes of the CSP are to: expand opportunities for all students, particularly students facing educational disadvantages and students who traditionally have been underserved by charter schools, to attend high-quality charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of public charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; encourage States to provide facilities support to charter schools; and support efforts to strengthen the charter school authorizing process. Through the CMO grant program, the Department provides funds to CMOs on a competitive basis to enable them to replicate or expand one or more high-

quality charter schools. More specifically, grant funds may be used to expand the enrollment of one or more existing high-quality charter schools, or to open one or more high-quality charter schools by replicating an existing high-quality charter school model.

Program Authority: Title IV, Part C of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA).

We published a notice of proposed priorities, requirements, definitions, and selection criteria for this program in the *Federal Register* on July 27, 2018 (83 FR 35571) (NPP). The NPP contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria.

There are several significant differences between the NPP and this notice of final priorities, requirements, definitions, and selection criteria (NFP). First, we have revised the title and focus of Priority 2 (which was proposed as "School Improvement through Restart Efforts") to clarify that applicants addressing the priority should be focused on reopening, and not restarting, academically low-performing public schools as charter schools. In addition, we have revised Priority 2 to require applicants to address each subpart in order to meet the priority.

Second, we have revised Priority 3--High School Students to clarify that there is a broad range of postsecondary education options for which high-quality charter schools that serve high school students may prepare their students, including certain one-year training programs as well as two- and four-year colleges and universities. We have also revised Priority 3 to specify that high school students include educationally disadvantaged students. In addition, we have revised Priority 4--Low-Income Demographic to require applicants receiving priority points to demonstrate that they will maintain a poverty threshold that is the same as, or substantially similar to, the level specified in the grant application for the entire grant period. Further, we have revised Priority 7 and related definitions to include students who are Native Hawaiian or Native American Pacific Islander, as well as students who are Indians (including Alaska Natives), and to clarify that applicants must meaningfully collaborate with community leaders. Finally, we have revised Selection Criterion (b) - -Significance of Contribution in Assisting Educationally Disadvantaged Students to emphasize students with disabilities² and English learners. We discuss these

² For purposes of these final priorities, requirements, definitions, and

changes in detail in the Analysis of Comments and Changes section of this document.

Public Comment: In response to our invitation in the NPP, 36 parties submitted comments on the proposed priorities, requirements, definitions, and selection criteria.

We group major issues according to subject.

Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priorities, requirements, definitions, or selection criteria.

Analysis of Comments and Changes: An analysis of the comments and changes in the priorities, requirements, definitions, and selection criteria since publication of the NPP follows.

General

Comments: One commenter suggested that we include a focus on students from military families, noting that military families may not be able to afford charter school tuition.

Discussion: First, we note that charter schools are public

selection criteria, "students with disabilities" or "student with a disability" has the same meaning as "children with disabilities" or "child with a disability," respectively, as defined in section 8101(4) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA). Under section 8101(4), "child with a disability" has the same meaning given that term in section 602 of the Individuals with Disabilities Education Act.

schools and, by definition, may not charge tuition (ESEA section 4310(2)). Nonetheless, we agree that military- and veteran-connected students often face unique challenges. On March 2, 2018, the Department published in the *Federal Register* (83 FR 9096) the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities), which are available for use in all of the Department's discretionary grant programs, including the CMO grant program. In recognition of the unique challenges faced by military families, Priority 11 in the Supplemental Priorities focuses on ensuring that service members, veterans, and their families have access to high-quality educational options. In any fiscal year in which the Department awards new grants under the CMO grant program, we may use this supplemental priority in conjunction with the priorities, requirements, definitions, and selection criteria in the ESEA and established in this document. Therefore, we decline to revise the final priorities, requirements, definitions, and selection criteria to add a focus on military families.

Changes: None.

Comments: Seven commenters urged the Department to clarify through these final priorities, requirements, definitions, and selection criteria that virtual charter schools must

ensure that all students, particularly students with disabilities, can access virtual and online content. Several commenters requested that we require all virtual public schools, including virtual charter schools, to demonstrate compliance with the Web Content Accessibility Guidelines (WCAG). Other commenters suggested that applicants proposing to replicate or expand virtual charter schools be required to focus on enrollment and retention of, and academic outcomes for, educationally disadvantaged students, and make performance and compliance data available publicly and in a timely manner. One commenter suggested that we refrain from awarding grants to virtual charter schools altogether.

Discussion: Section 4310(2)(G) of the ESEA requires charter schools receiving CSP funds to comply with various laws, including section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act of 1990 (ADA), and Part B of the Individuals with Disabilities Education Act (IDEA). Thus, consistent with the requirements in Section 504 and Title II of the ADA, virtual charter schools must ensure that all content is accessible to students with disabilities enrolled in the school as well as prospective students with disabilities and parents or guardians. Similarly, like other local

educational agencies (LEAs), public charter schools that operate as LEAs under State law, including virtual charter school LEAs and LEAs that include virtual charter schools among their public schools, must ensure that eligible students with disabilities enrolled in these schools receive a free appropriate public education (FAPE) in accordance with the requirements of Part B of the IDEA.³ To meet this obligation, these schools must provide instructional materials to students with disabilities in accessible formats, consistent with the requirements in Section 504 and Title II of the ADA. If web-based instruction or online instructional platforms are used, these schools must ensure that the information provided through those sources is accessible to students with disabilities, consistent with the requirements in Section 504 and Title II of the ADA. Because these requirements are already established by Federal law, we decline to revise these final priorities, requirements, definitions, or selection criteria.

Further, while we understand that WCAG is designed to

³ Students with disabilities attending public charter schools and their parents retain all rights under Part B of the IDEA. Further, charter schools that operate as LEAs under State law, as well as LEAs that include charter schools among their public schools, are responsible for ensuring that the requirements of Part B of the IDEA are met, unless State law assigns that responsibility to some other entity. See 34 CFR 300.209.

make web content accessible to a wide range of individuals with disabilities and that demonstrating compliance with WCAG is a widely accepted method for public schools, including virtual public charter schools, to meet the obligations discussed above, the Department does not require grantees to adopt a particular standard to ensure accessibility of web content or online platforms to meet their obligations under Section 504 or Title II of the ADA. Moreover, the WCAG standards are updated periodically.

With respect to requiring virtual charter schools to focus on the enrollment and retention of, and academic outcomes for, educationally disadvantaged students, to receive a grant under the CMO grant program, an applicant must provide, among other things, student assessment results and attendance and retention rates for all students served by its schools, including educationally disadvantaged students (ESEA section 4305(b)(3)(A)).

Further, CMO grantees must assure that each charter school receiving CSP funds makes annual performance and enrollment data publicly available (ESEA section 4303(f)(2)(G)(v)).

CMO applicants must also provide the Department with information on existing significant compliance and management issues (ESEA section 4305(b)(3)(A)(iii)). These requirements apply to all CMO grantees, regardless of

whether they intend to replicate or expand virtual or brick-and-mortar charter schools.

Finally, while we recognize that virtual charter schools can present unique challenges with respect to the enforcement of CSP requirements, the ESEA does not preclude virtual charter schools from receiving CSP funds. For this reason, we decline to adopt the commenter's suggestion that we preclude applicants that propose to replicate or expand virtual charter schools from applying for funds under this program.

Changes: None.

Comments: Several commenters requested that we clarify that charter schools are obligated to serve students with disabilities. One commenter stated that charter schools must adhere to the IDEA, hold regular individualized education plan meetings, and offer face-inclusive policies as codified by State law. Another commenter urged the Department to focus specifically on the needs of students with Tourette's syndrome and obsessive compulsive disorder. Several commenters suggested that we include a priority for applicants that propose to replicate or expand high-quality charter schools that serve students with disabilities.

Discussion: It is unclear what the commenter meant by "face-inclusive policies," but we agree that students with

disabilities face unique educational challenges. As stated above, all eligible students with disabilities attending public charter schools and their parents retain all rights under Part B of the IDEA, including the right to receive FAPE. In addition, these final priorities, requirements, definitions, and selection criteria include a requirement that applicants for CMO grants describe how they intend to comply with Part B of the IDEA.

Further, a number of priorities, requirements, definitions, and selection criteria under this program focus on educationally disadvantaged students, which include students who are children with disabilities, as defined in section 8101(4) of the ESEA. The Supplemental Priorities also include two priorities that focus on the needs of students with disabilities and could be used in future CMO grant competitions. These priorities are: Priority 1--Empowering Families and Individuals to Choose a High-quality Education that Meets their Unique Needs (which includes a specific option for focusing on students with disabilities) and Priority 5--Meeting the Unique Needs of Students and Children with Disabilities and/or Those with Unique Gifts and Talents. For these reasons, we decline to include a specific priority for students with disabilities or to focus this priority on students with a particular

disability or impairment, such as Tourette's Syndrome or obsessive compulsive disorder.

Changes: None.

Comments: Several commenters urged the Department to clarify whether applicants could still apply for CMO grants as groups or consortia and, if so, what the Department's expectations are for how a group or consortium application should be organized.

Discussion: Federal regulations at 34 CFR 75.127-75.129 specifically authorize applicants to apply as a group or consortium, and prescribe the requirements governing such applications. These final priorities, requirements, definitions, and selection criteria do not alter the requirements for group applications in 34 CFR 75.127-75.129. Therefore, we decline to make any changes in this area.

Changes: None.

Comments: One commenter suggested that the Department allow high-performing applicants to submit streamlined applications for CMO grants. The commenter also suggested that we increase per-seat funding caps for CMOs that are expanding grades in schools because grade expansion can often be as costly as opening new schools. In addition, the commenter asked that we allow CMOs to apply for CMO

grants and subgrants under section 4303 of the ESEA. Finally, the commenter asked that we issue nonregulatory guidance that would broadly interpret the term "minor facilities repairs" to ensure that charter schools can use CSP funds to ensure that students attend safe, clean, and well-maintained schools.

Discussion: Although the Department may have information regarding the past performance of some applicants--in particular, CMOs that have received CSP grants previously--we rely on the expertise of independent peer reviewers to evaluate the quality of applications submitted under a grant competition in order to ensure the fairness and integrity of the competition. Further, each application proposes to carry out different activities, and an applicant's successful implementation of one project does not guarantee the successful implementation of subsequent projects. To ensure an equal playing field, we believe it is critical that all applicants be required to submit the same general information for review. Therefore, we decline to enable high-performing applicants to submit streamlined applications, as suggested by the commenter.

With respect to the commenter's suggestion to raise per-seat funding caps, no revisions to these final priorities, requirements, definitions, or selection

criteria are necessary for the Department to change per-seat funding caps for CMO grants in a given year. Under 34 CFR 75.101 and 75.104(b), the Secretary may establish maximum funding amounts for grants by publishing a notice in the *Federal Register*. When establishing funding limits under a CMO grant competition for a given fiscal year, the Department considers a number of factors, including the availability of funds.

We also note that section 4303 of the ESEA authorizes the CSP Grants to State Entities (State Entities) program, under which the Department awards grants to State entities, and State entities, in turn, award subgrants to eligible applicants (i.e., charter school developers and charter schools) to enable such eligible applicants to open and prepare for the operation of new charter schools and replicated high-quality charter schools, and to expand high-quality charter schools. The ESEA does not explicitly prohibit an entity that qualifies as a CMO and an eligible applicant from applying for both a CMO grant under section 4305(b) and a subgrant under section 4303(b). In order to receive funds under both programs, however, the CMO must propose to carry out different activities under each application and demonstrate that it has the resources and capability to administer multiple projects effectively and

efficiently.

Finally, we agree that students learn best in safe, clean, and well-maintained environments. Section 4303(h)(3) of the ESEA authorizes the use of CSP funds to “[carry] out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction)” (20 U.S.C. 7221b(h)(3)).⁴ We believe this provision affords CMO grantees the flexibility they need to ensure that the charter schools they manage occupy buildings and facilities that are safe, clean, and well-maintained. For examples of the types of repairs that could qualify as “minor facilities repairs” under section 4305(c), please see the Department’s nonregulatory guidance entitled, “Charter Schools Program New Flexibilities under the Every Student Succeeds Act (ESSA): Frequently Asked Questions.”⁵

Changes: None.

Comments: One commenter suggested that we add a priority for CMOs that propose to replicate or expand high-quality charter schools that focus on dropout recovery and academic

⁴ Under section 4305(c) of the ESEA, “the same terms and conditions” that apply to State Entity grants under section 4303 apply to CMO grants.

⁵ See <https://innovation.ed.gov/files/2017/12/CSP-ESSA-Flexibilities-FAQ-2017.pdf>.

re-entry in order to maintain consistency with the authorizing statute.

Discussion: We agree that these final priorities, requirements, definitions, and selection criteria should align with the ESEA and believe that they do. Section 4305(b)(5)(D) of the ESEA authorizes the Secretary to give priority to applicants that “propose to operate or manage high-quality charter schools that focus on dropout recovery and academic re-entry.” We believe this statutory language is clear. Like the other statutory priorities as well as the priorities established under this NFP, the Secretary may choose to apply the statutory priority for dropout recovery and academic re-entry charter schools under a CMO grant competition in FY 2019 and future years.

Accordingly, we decline to add a priority for CMOs that propose to replicate or expand high-quality charter schools that focus on dropout recovery and academic re-entry.

Changes: None.

Comments: Several commenters suggested that we designate specific priorities as absolute priorities or competitive preference priorities for competitions in FY 2019 and later years.

Discussion: Federal regulations at 34 CFR 75.105 authorize the Department to establish annual priorities and to

designate the priorities as invitational, competitive preference, or absolute. Therefore, we do not need to revise the final priorities in order to designate them as absolute or competitive preference priorities for competitions in FY 2019 and in later years. In accordance with 34 CFR 75.105(c), we will designate specific priorities as invitational, absolute or competitive preference priorities for the FY 2019 competition, and competitions in later years, through a notice inviting applications (NIA) in the *Federal Register*.

Changes: None.

Priority 1--Promoting Diversity

Comments: Several commenters expressed support for a priority that encourages diverse student populations. One commenter recommended that we follow a specific methodology for assessing whether applicants meet the priority.

Several commenters questioned whether an applicant could meet this priority and Priority 4--Low-Income Demographic, stating that it may be difficult for a school focused on socioeconomic diversity to maintain a high percentage of students who are individuals from low-income families.

Some commenters recommended that the Department expand the scope of the priority to include students with disabilities, in addition to students from racially and

socioeconomically diverse backgrounds. Finally, two commenters expressed concern about the priority's effect on communities and school districts more broadly. Specifically, one commenter argued that providing incentives for CMOs that propose to replicate or expand charter schools with diverse student bodies is unlikely to be successful because students typically attend schools in or near their neighborhoods, and neighborhoods, particularly in cities, tend to be segregated due to decades of deeply rooted societal forces, including racially motivated housing practices and school assignments. Another commenter suggested that we revise the priority to require that any efforts to replicate or expand high-quality charter schools with an intentional focus on diversity yield "zero net effect" on the demographics of the schools from which the students are recruited.

Discussion: We believe that students can benefit from attending high-quality charter schools with racially and socioeconomically diverse student bodies. We agree that following a rubric, or methodology, for determining whether an applicant meets the priority can be useful. We will determine an appropriate method for reviewing applications addressing this priority in the NIA for a given

competition.

We agree with the commenters that some aspects of Priority 1--Promoting Diversity could potentially conflict with certain subparts of Priority 4--Low-Income Demographic and, as such, it may be challenging for a CMO grant application to meet both priorities. The Department has flexibility in choosing priorities, requirements, and selection criteria for its grant competitions. In FY 2019 and in future years, we will select a combination of priorities, requirements, and selection criteria that is appropriate for the CMO program and aligned with the Secretary's policy objectives.

In addition, we share the commenters' concerns about ensuring that students with disabilities receive FAPE. However, this priority focuses specifically on diversity with respect to race and socioeconomic status. Race and socioeconomic status are commonly cited in research on diversity and its relationship with student academic achievement as two demographic factors that have a major impact.⁶ Further, we believe it is important that the final priority aligns with the statutory priority for this

⁶ See, e.g.: The Century Foundation (2018). Diverse by Design Charter Schools. <https://tcf.org/content/report/diverse-design-charter-schools/>.

program in ESEA section 4305(b)(5)(A), which focuses on replicating or expanding high-quality charter schools with racially and socioeconomically diverse student bodies.

We agree with the commenter that cultivating and maintaining a diverse student body can be difficult and is unlikely to happen overnight. We also agree that high-quality charter schools can be a powerful option for educationally disadvantaged students but that many factors, such as safe and reliable transportation to and from school, can impact a family's realistic educational choices. This priority focuses on applicants that propose to replicate or expand high-quality charter schools with an intentional focus on racial and socioeconomic diversity, but it does not dictate how a CMO should approach this work. Promising practices for promoting diversity continue to emerge, and charter schools have great flexibility to choose an educational program that attracts students from diverse backgrounds and geographic areas outside of the immediate area surrounding the school. The intent of this priority is to encourage CMOs to replicate or expand high-quality charter schools with purposefully diverse student bodies through strategies that comply with non-discrimination requirements in the U.S. Constitution and in Federal civil rights laws, make sense for their local

contexts, and are aligned with reliable research on the relationship between academic achievement and racial and socioeconomic diversity in schools.

Finally, we agree with the commenter that CMOs should consider the community context when replicating or expanding high-quality charter schools, particularly charter schools with an intentional focus on racial and socioeconomically diverse student bodies. However, we do not think it is appropriate or practical to require that CMOs demonstrate to the Department a net zero effect on surrounding schools. For these reasons, we decline to revise the priority.

Changes: None.

Comment: None.

Discussion: Upon further review, we determined that it is critical to remind applicants addressing Priority 1 of their nondiscrimination obligations under Federal law. As such, we are revising the priority to clarify that proposed projects must be consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Changes: We have added the phrase "consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws" to the

priority.

Priority 2--Reopening Academically Poor-performing Public Schools as Charter Schools

Comments: Several commenters expressed support for this priority. One commenter asked that we revise the priority to encourage applications from CMOs that can share best practices for turning around low-performing traditional public schools. Two commenters requested that we clarify whether an applicant could address the priority by proposing to open a new charter school, rather than to reopen an academically poor-performing public school as a charter school. One commenter suggested that we focus the priority on reopening academically poor-performing middle and high schools as charter schools.

Discussion: We agree with the commenters that the purpose of this priority--to "reopen" academically poor-performing charter schools--could be clearer. An applicant proposing only to open new charter schools, and not "reopen" an academically poor-performing public school as a charter school, would not meet this specific priority (but could meet other priorities established in this NFP). Therefore, in order to clarify the purpose of this priority, we are replacing the term "restart" with "reopen." In addition, we agree that starting a new school is an important

endeavor, and note that opening new high-quality charter schools is a key element of the CSP. We also believe that charter schools can play an important role in helping to improve academic outcomes for students in low-performing public schools. Therefore, this priority is specifically focused on CMOs that propose to reopen academically poor-performing public schools as charter schools.

We also agree that applicants should be required to demonstrate past success working with low-achieving public schools in order to meet the priority. Accordingly, we are revising the stem of the priority to require applicants to address each subpart of the priority, including the subpart focused on demonstrating past success working with at least one academically poor-performing public school or schools that were designated as persistently lowest-achieving schools or priority schools under the School Improvement Grant program or ESEA flexibility. Under this standard, an applicant can share best practices working with traditional public schools as well as nontraditional public schools, such as public charter schools.

Finally, we agree that a focus on middle schools and high schools may be appropriate in specific contexts, and have included a priority for applications that propose to replicate or expand high-quality charter schools that serve

high school students. Under this priority, an applicant can propose to reopen an academically poor-performing middle school or high school as a charter school as it sees fit. Therefore, we decline to revise the priority to focus on reopening academically poor-performing middle schools and high schools.

Changes: We have revised the priority to replace the term "restart" with "reopen." In addition, we have revised the stem of the priority so that all subparts must be addressed in order for an applicant to meet the priority.

Comments: Several commenters opined that there is a disproportionately high percentage of students with disabilities in turnaround schools and suggested that we require CMOs proposing to reopen academically poor-performing public schools as charter schools to address the issue.

Discussion: A major goal of these priorities, requirements, definitions, and selection criteria is to expand high-quality educational opportunities for educationally disadvantaged students, including students with disabilities. CMO grantees, and the charter schools they manage, must comply with applicable laws, including Part B of the IDEA, Section 504, and Title II of the ADA. Further, to meet the priority, an applicant must propose a

strategy that targets a student population that is demographically similar to that of the academically poor-performing public school. Therefore, we decline to revise this priority in the manner suggested by the commenter.

Changes: None.

Comments: Several commenters requested that the Department clarify its policy regarding admissions lotteries, including how a CMO might use a weighted lottery to address this priority. One commenter urged the Department to ensure that any grantee using a weighted lottery meet all relevant statutory requirements, and another commenter suggested that we ensure that any weighted lotteries are designed to enroll students with disabilities in proportion to the enrollment of such students in neighboring schools. Several commenters suggested that the Department update its nonregulatory guidance to clarify that CMOs that are reopening academically poor-performing public schools as charter schools could exempt from admissions lotteries students who are enrolled in the academically poor-performing public school at the time it is reopened.

Discussion: Under section 4303(c)(3) of the ESEA, charter schools receiving funds under a CMO grant generally may use "a weighted lottery to give slightly better chances for admission to all, or a subset of, educationally

disadvantaged students," so long as weighted lotteries in favor of such students are not prohibited under State law and are not used to create schools that would serve a particular group of students exclusively.⁷ Therefore, a charter school could use a weighted lottery for the purpose of enrolling a proportionate number of students with disabilities in the charter school as compared to the number of such students enrolled in neighboring schools. As such, the Department declines to expand the statutory requirements for weighted lotteries as they apply to CMO grants.

Further, the Department's most recent update to the CSP nonregulatory guidance was issued in January 2014.⁸ Although that guidance was issued prior to enactment of the ESSA, much of it is applicable to the CSP lottery requirement in section 4310(2)(H) of the ESEA. Specifically, the January 2014 CSP Nonregulatory Guidance identifies several categories of students who may be exempted from a charter school's lottery, including students who are enrolled in a public school at the time it is converted into a charter school. The Department may

⁷ As stated above, under section 4305(c) of the ESEA, CMO grantees generally are subject to the same terms and conditions as State entity grantees funded under section 4303.

⁸ See <http://www2.ed.gov/programs/charter/fy14cspnonregguidance.doc>.

update this guidance to address changes to the CSP made by the ESSA. In the meantime, CMO grantees may continue to follow the guidelines in the January 2014 CSP Nonregulatory Guidance regarding the categories of students who may be exempted from the lottery requirement.

Changes: None.

Comments: One commenter recommended that we use Priority 2 cautiously because available research on charter school performance is mixed.

Discussion: We agree that, where possible, Federal funding should be used primarily to support strategies that are based on research. To meet this priority, applicants would need to demonstrate past success working with academically poor-performing public schools. In addition, all applicants, regardless of whether they address this priority, must disclose compliance issues, provide a logic model for how they will replicate or expand high-quality charter schools, and describe how they currently operate or manage high-quality charter schools. This program specifically supports the replication and expansion of high-quality charter schools, and the final priorities, requirements, definitions, and selection criteria are designed to differentiate between high-quality applications that are likely to be successful and low-quality

applications that have little chance of succeeding.

Changes: None.

Comment: None.

Discussion: Upon further review, we determined that it is critical to remind applicants addressing Priority 2 of their nondiscrimination obligations under Federal law. As such, we are revising the priority to clarify that proposed projects must be consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Changes: We have added the phrase "consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws" to the priority.

Priority 3--High School Students

Comments: Several commenters expressed support for the priority but asked that we revise it to require applicants to demonstrate that their proposed strategy for replicating or expanding high-quality charter high schools is evidence-based. One commenter also suggested that applicants be required to provide data on former students' postsecondary degree attainment and employment. Conversely, another commenter suggested we use this priority cautiously due to a lack of research on charter high schools.

Discussion: We agree that using research to inform CMO grant proposals is useful in certain contexts, but we also understand that research in this area is limited. The Department's regulations at 34 CFR 75.226 specifically authorize the Secretary to give priority to applications that are supported by "evidence." The Department may choose to implement such a priority under the CMO grant competition in a given year.

Likewise, we agree that obtaining data on students' postsecondary degree attainment and employment may be relevant and encourage applicants to submit such information, as appropriate. On the other hand, the Department must balance its interest in obtaining sufficient information to assist peer reviewers in evaluating the quality of applications with its interest in minimizing the burden on applicants. In order to meet the priority, an applicant must describe how it will prepare students for postsecondary education and provide support for its graduates who enroll in institutions of higher education (IHEs) and certain one-year training programs that prepare students for gainful employment in a recognized occupation. In addition, applicants must establish one or more project-specific performance measures that will provide reliable information about the grantee's

progress in meeting the objectives of the project. We believe these requirements will generate the necessary information to enable peer reviewers to evaluate the quality of applications without placing an undue burden on applicants. For these reasons, we decline to revise the priority in the manner suggested by the commenters.

Changes: None.

Comments: Several commenters suggested that we broaden the priority to focus on high schools that prepare students for paths to career and technical training and military service, as well as enrollment in two- and four-year colleges and universities. Several other commenters suggested that we revise the priority to encompass high schools that focus on transitional programming for students with disabilities.

Discussion: We agree that sending students to two- or four-year colleges and universities is not the only measure of a charter high school's success and that, for some students, getting a job or attending technical school may be the best option immediately after high school.

Accordingly, we are revising subparts (ii) and (iii) of the priority to encompass a broader range of postsecondary education, training, and career options. Specifically, for this priority, postsecondary education institutions include

both IHEs and educational institutions that offer one-year training programs that prepare students for gainful employment in a recognized occupation (as described in section 101(b)(1) of the Higher Education Act of 1965, as amended (HEA)). For clarity, we are also defining "IHE" in this NFP. The definition we are adding to the NFP is the same as the definition of "IHE" in section 8101(29) of the ESEA.

Further, while a career in the military can be very rewarding, the Department's mission is to promote student academic achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access. Therefore, we believe the primary goal of elementary and secondary education should be preparing students for success at the postsecondary education level. Nevertheless, charter schools have great flexibility to establish a unique mission and educational focus. Thus, an applicant may propose to replicate or expand charter schools with a wide range of educational programs, including a military (i.e., Reserve Officers' Training Corps (ROTC)) focus, so long as the charter school meets the definition of "high-quality charter school" in section 4310(8) of the ESEA and the terms of its charter. Our ultimate focus remains on ensuring that students

graduate from high school prepared to succeed in a wide variety of postsecondary education options.

We also agree with the commenters that ensuring that students with disabilities (as well as other educationally disadvantaged students) graduate from high school with adequate preparation for postsecondary education options is paramount. Therefore, we are revising the priority to include specific references to educationally disadvantaged students where appropriate. Also, as stated above, eligible students with disabilities attending public charter schools and their parents retain their right to receive FAPE, and the IDEA requirements for transition services apply beginning with the first individualized education plan (IEP) to be in effect when the student turns 16, or younger if determined appropriate by the IEP team.⁹ Further, in order to be considered a high-quality charter school (a key aspect of this program), a charter school that serves high school students must have demonstrated success in increasing student academic achievement and graduation rates, and must provide that information disaggregated by subgroups of students defined in section

⁹ See 20 U.S.C. 1414(d)(1)(A)(i)(VIII) and 34 CFR 300.320(b); see also 20 U.S.C. 1401(34) and 34 CFR 300.43.

1111(c)(2) of the ESEA, which includes children with disabilities, as defined in the IDEA. Therefore, while we are revising the priority to include specific references to educationally disadvantaged students, we decline to revise the priority to include a specific focus on high schools that provide transitional programming (i.e., preparation for specific postsecondary education options) for students with disabilities.

Changes: We have revised Priority 3--High School Students to include specific references to educationally disadvantaged students and to clarify that the priority applies to high-quality charter schools that prepare high school students to attend IHEs, which generally consist of two- and four-year colleges and universities, as well as certain postsecondary education institutions that offer one-year training programs. We have also added a definition for "IHE;" this change is discussed later in this notice.

Priority 4--Low-Income Demographic

Comments: Several commenters expressed support for the priority but requested that we revise it to support only CMOs that can demonstrate that at least 60 percent of the students across all of the charter schools they operate or manage are individuals from low-income families. One

commenter stated that the vast majority of CMOs operate schools with at least 60 percent students who are individuals from low-income families, so this priority would not meaningfully differentiate applicants. Another commenter suggested that we keep the priority's original structure but revise it to support CMOs that can demonstrate that 60 to 90 percent, instead of 40 to 60 percent, of the students across all of the charter schools that they operate or manage are individuals from low-income families.

Discussion: We believe that this priority is essential to provide incentives for CMOs to support charter schools that serve student populations with the most need. As written, the priority affords the Secretary discretion to establish a poverty threshold of 40 percent, 50 percent, or 60 percent individuals from low-income families under the CMO grant competition in a given fiscal year. We believe that 40 percent is an appropriate lower bound for this priority because it is aligned with the poverty threshold a Title I school generally must meet in order to operate a schoolwide program under section 1114 of the ESEA. For this reason, we decline to revise the priority to establish only one poverty threshold of 60 percent individuals from low-income families.

We also decline to revise the priority to require that CMOs operate or manage charter schools with 60 to 90 percent students who are individuals from low-income families since, as stated above, the priority could potentially conflict with Priority 1--Promoting Diversity in a single competition. We recognize that many CMOs focus their efforts in high-need communities, but we believe it is also important to support high-quality charter schools that are designed with an intentional focus on racial and socioeconomic diversity. In any given year, we may include in an NIA one or more of these final priorities, requirements, definitions, and selection criteria individually or in combination with each other; therefore, we decline to revise the priority as suggested by the commenters.

Changes: None.

Comments: One commenter stated that applicants addressing this priority must demonstrate past success. The commenter also suggested that we revise the priority to encourage applicants to provide transportation and meal services to students.

Discussion: While applicants' past performance is not an explicit focus of this priority, it is embedded in the program through the various application priorities,

requirements, definitions, and selection criteria, including the Quality of the Eligible Applicant selection criterion. We also recognize that transportation and meals are important issues for charter schools that serve large numbers of low-income students. While CSP funds may be used to provide transportation and "healthy snacks" for students in limited circumstances, a number of other Federal, State, and local programs (such as the United States Department of Agriculture's National School Lunch Program) provide resources specifically for those purposes. For this reason, we decline to revise the priority to encourage applicants to provide transportation and meal services to students.

Changes: None.

Comments: One commenter asked that we expand the priority to focus on other high-need populations, such as students with disabilities and English learners.

Discussion: Many aspects of the CMO grant program and these priorities, requirements, definitions, and selection criteria focus on educationally disadvantaged students, which include students with disabilities and English learners. In addition, we are revising some selection factors under the Contribution in Assisting Educationally Disadvantaged Students criterion to include specific

references to students with disabilities and English learners. Further, the Supplemental Priorities, which may be used under the CMO grant program, include several priorities (e.g., Priority 1(b)(ii) and (iii) and Priority 5) that focus on students with disabilities and English learners. Therefore, we decline to revise this priority to focus on other high-need groups, such as students with disabilities or English learners.

Changes: None.

Comments: One commenter requested that we clarify how the priority would work as a competitive preference priority in a competition. Specifically, the commenter asked us to clarify whether points would be awarded on a sliding scale (e.g., one point for an applicant that can demonstrate its schools have at least 40 percent students who are individuals from low-income families, two points for an applicant that can demonstrate its schools have at least 50 percent students who are individuals from low-income families, and three points for an applicant that can demonstrate its schools have at least 60 percent students who are individuals from low-income families). The commenter expressed concern that an applicant could receive the maximum number of priority points for a higher poverty threshold, but only be required to maintain the minimum

threshold throughout its grant project. The commenter also expressed concern that the focus of the priority is on all schools operated or managed by the CMO, and not only on the charter schools to be replicated or expanded as part of the grant project.

Discussion: While the priority is written in a manner that gives the Department flexibility to apply one, two, or all three poverty standards in a single competition, we do not anticipate applying more than one poverty standard in a single competition or assigning points on a sliding scale.

We agree with the commenter that an applicant receiving points for this priority should be required to maintain the same, or a substantially similar, poverty threshold throughout the life of the grant. As such, we are revising the priority to clarify that an applicant must demonstrate not only that its current portfolio of schools meets the specified poverty threshold, but also that it will maintain the same, or a substantially similar, poverty level in the charter schools that it replicates or expands, as well as its other schools, for the entire grant period. We recognize that the percentage of students who are individuals from low-income families may fluctuate on an annual basis and, for this reason, believe the priority should focus on all schools operated by a CMO and not just

the charter schools to be replicated or expanded as part of the grant project.

Changes: We have added a requirement that applicants demonstrate that they will maintain for the entire grant period a poverty threshold across the schools they operate or manage that is the same as, or substantially similar to, the poverty level proposed in the grant application.

Priority 5--Number of Charter Schools Operated or Managed by the Eligible Applicant

Comments: Several commenters suggested that we use the priority sparingly or remove it altogether. One commenter noted that the size of a CMO does not directly correlate to the quality of its schools, and another cited recent research suggesting that CMO size should not be used as a proxy for other characteristics. Other commenters expressed concern that the priority would dilute the quality of funded applications because it would create several smaller competitions for CMO grants. One commenter questioned the purpose of the priority, noting that if the intent is to support smaller, less-established CMOs, we may get better results using the priority for novice applicants in 34 CFR 75.225.

Discussion: We agree that size is not necessarily positively correlated with quality. We note, however, that

the Department can employ several mechanisms, established in the ESEA and these final priorities, requirements, definitions, and selection criteria, to assess the quality of an applicant and its proposal. This priority, by itself, is not intended to assess quality with respect to the size of the applicant. Rather, this priority is designed primarily to enable the Secretary to give a competitive advantage to small, medium, or large CMOs in a given year based on the Department's policy objectives for that year. We understand the concern that this priority could be used to create smaller sub-competitions that would decrease the amount of available funds for other CMOs. In any year in which we announce a competition, we will select a combination of priorities, requirements, and selection criteria that meet the requirements of the CMO grant program and is aligned with the Secretary's policy objectives.

Finally, we agree that 34 CFR 75.225 provides a useful tool for encouraging applications from novice applicants. The Department will continue to follow the requirements in 34 CFR 75.225 to give priority to novice applicants in future CMO grant competitions, as we deem appropriate.

Changes: None.

Priority 6--Rural Community

Comments: Several commenters expressed support for the priority but questioned whether an applicant could meet the priority by proposing to replicate or expand schools in a combination of rural communities and other communities.

Discussion: As written, this priority gives the Department flexibility to establish an absolute or competitive preference priority for applications that propose to replicate or expand one or more high-quality charter schools in a rural community or one or more high-quality charter schools in a non-rural community. To meet the priority, an applicant would need to propose to replicate or expand at least one high-quality charter school in a rural community or at least one high-quality charter school in a non-rural community, depending on the Department's policy objectives in a given year and which prong of the priority the applicant is addressing. The priority language does not preclude an applicant from also proposing to replicate or expand high-quality charter schools in other communities. We believe the priority is clear and, therefore, decline to revise it.

Changes: None.

Comments: One commenter asked that we revise the priority to focus on opening new charter schools in rural areas. Conversely, another commenter raised concerns that new

charter schools in rural areas would drain resources from traditional public schools.

Discussion: The purpose of the CMO grant program is to replicate or expand high-quality charter schools. Although replicated charter schools are based on educational models at existing high-quality charter schools, for all practical purposes, they are new charter schools. Further, in light of the unique challenges faced by rural communities, we believe prospective applicants for CMO grants should have the flexibility to design their projects in a way that meets the specific needs of the communities they plan to serve, including determining whether a particular rural community would be best served by creating a new, or replicated, charter school or by expanding an existing charter school.

In addition, we recognize that replicating or expanding high-quality charter schools will impact the surrounding community and is likely to have a greater impact in a rural community. The Department's broad focus is on expanding high-quality educational options for all students, including students in rural communities. Ideally, increasing access to high-quality educational options in rural communities will help improve student academic achievement not only in charter schools, but also

in traditional public schools in the community. For these reasons, we decline to revise the priority.

Changes: None.

Priority 7--Replicating or Expanding High-quality Charter Schools to Serve Native American Students

Comments: Several commenters urged the Department to add a priority that would support Indian students by encouraging CMOs to replicate or expand dual language immersion schools that focus primarily on Indian languages. Another commenter suggested that the Department consider a CMO's ability to meaningfully engage with Tribal communities when making CMO grant decisions.

Discussion: As discussed in the "Definitions" section below, we have replaced the term "students who are Indians" with the term "Native American students" in this priority. These changes allow applicants to receive priority points for proposing to replicate or expand high-quality charter schools that serve Native Hawaiian and Native American Pacific Islander students, as well as students who are Indians (including Alaska Natives). We agree with the commenters that cultivating strong relationships with the communities to be served is crucial, and that focusing on Native American language immersion is a promising strategy for building and maintaining those relationships and

improving academic outcomes for Native American students. To meet this priority, an applicant must propose to replicate or expand a high-quality charter school that will meet the unique needs of Native American students. The applicant may employ various strategies that reflect and preserve Native American language, culture, and history, including a "dual language immersion" program that focuses on Native American languages. Thus, an applicant proposing to replicate or expand a high-quality charter school with a dual language immersion program that focuses on Native American languages could meet this priority.

In addition, while we believe that a requirement for applicants to demonstrate a commitment to meaningfully collaborate with Tribal communities would result in actual collaborations, we agree that the language in the priority could be clearer with respect to requiring applicants to meaningfully engage with Tribal communities. Therefore, we are revising the priority to clarify that applicants must do more than demonstrate a commitment to collaborate.

Changes: We have revised the priority to replace the phrase "demonstrate a commitment to meaningfully collaborate" with "meaningfully collaborate."

Comments: One commenter expressed support for the priority but suggested that we revise it to require applicants to

submit a resolution or official document, rather than a letter, from surrounding Indian Tribes or Indian organizations that demonstrates their support for the proposed project. The commenter also suggested that we clarify our expectations for the composition of the board for a charter school to be replicated or expanded under the grant, and suggested that we require the board to have a percentage of Indian Tribe or Indian organization members that is comparable to the percentage of Native American students enrolled in the school. Finally, the commenter suggested that we revise the priority to require that applicants demonstrate a record of success in Tribal communities, particularly for applicants proposing to replicate or expand virtual charter schools.

Discussion: We agree that a CMO with strong support from surrounding Indian Tribes or Indian organizations is more likely to succeed in replicating or expanding high-quality charter schools that serve a high proportion of Native American students. Accordingly, in order to meet this priority, the applicant must submit a letter of support from an Indian Tribe or Indian organization located in the area to be served by the charter school. While a resolution is not required, an applicant is not precluded from submitting a resolution, or other official document,

to demonstrate support.

Likewise, we believe that charter school developers and charter schools in the communities where the charter school will be located are best suited to assemble a school board that understands the unique educational needs of the students to be served. We believe that requiring a specific percentage or number of board members from Indian Tribes or Indian organizations could limit the ability of applicants to fully respond to the needs of the communities they propose to serve. In order to meet the priority, however, CMOs will need to collaborate with an Indian Tribe or Indian organization in the communities in which they propose to replicate or expand high-quality charter schools to ensure that school boards represent their students appropriately. While a school board with a percentage of members of Indian Tribes or Indian organizations that is comparable to the percentage of Native American students to be served could satisfy the substantial percentage requirement in this priority, there may be circumstances where a smaller or larger percentage of members from an Indian Tribe or Indian organization is appropriate. For these reasons, we decline to revise the priority as suggested by the commenter.

Finally, while an applicant is not precluded from

demonstrating past success working with Tribal communities, we decline to revise the priority to impose such a requirement. In order to receive CMO funds, all applicants must describe how they operate or manage the charter schools (including virtual charter schools) for which they have presented evidence of success (see Requirement (e)). We believe that Indian Tribes and Indian organizations located in the community to be served by the replicated or expanded charter school are in the best position to determine whether a particular CMO applicant has the requisite knowledge and experience to serve Native American students effectively. Therefore, the requirements that an applicant obtain a letter of support from, and meaningfully collaborate with, a local Indian Tribe or Indian organization should prevent CMOs that lack the knowledge and experience necessary to serve Tribal communities successfully from meeting the priority. For these reasons, we decline to revise the priority in the manner suggested by the commenter.

Changes: None.

Comment: None.

Discussion: Upon further review, we determined that it is critical to remind applicants addressing Priority 7 of their nondiscrimination obligations under Federal law. As

such, we are revising the priority to clarify that proposed projects must be consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Changes: We have added the phrase "consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws" to the priority.

Requirements

Comments: A few commenters requested that we clarify which requirements we would include in future CMO grant competitions. One commenter also requested that we clarify which requirements represent existing obligations under Federal law.

Discussion: As a general matter, the CSP statute prescribes the priorities, requirements, definitions, and selection criteria that apply to all CMO grants, regardless of the fiscal year in which the grant is awarded. In addition, the Department's regulations at 34 CFR part 75 prescribe the procedures the Department must follow when awarding and administering discretionary grants. The main purposes of these final priorities, requirements, definitions, and selection criteria are to clarify the Department's interpretation of certain statutory

requirements and to establish other priorities, requirements, definitions, and selection criteria consistent with congressional intent. The Department generally has discretion to choose specific priorities, requirements, definitions, and selection criteria to apply to CMO grants in a given year based on the Department's policy objectives for that year. All of the requirements in this NFP are aligned with existing requirements for CMO grants under the ESEA and the Department's regulations.

Changes: None.

Comments: One commenter suggested that we require applicants to disclose whether any charter schools in their network meet the definition of "academically poor-performing public school." The commenter also suggested that we differentiate between "schools" and "campuses" because States vary in how they define the two terms.

Discussion: We agree that knowing whether an applicant has "academically poor-performing public schools" in its network could give the Department an indication of the overall quality of the CMO's charter schools. On the other hand, there are many reasons why a charter school may qualify as an academically poor-performing public school and, ultimately, the existence of one or more academically poor-performing public schools in a CMO's network is not

necessarily dispositive proof that the CMO is unable to administer a CMO grant effectively and efficiently. For example, it would not be unusual for an applicant that has reopened one or more low-achieving public schools to have an academically poor-performing public school in its network. Under Requirement (e), any CMO that receives a grant must provide evidence of success, regardless of whether the CMO has operated or managed academically poor-performing public schools.

In addition, Requirement (a) provides that applicants must demonstrate that they operate more than one charter school. Requirement (a) clearly states that, for purposes of the CMO grant program, multiple charter schools are considered to be separate schools if each school meets the definition of "charter school" in section 4310(2) of the ESEA and is treated as a separate school by its authorized public chartering agency and the State in which the charter school is located, including for purposes of accountability and reporting under Title I, Part A of the ESEA. For these reasons, we decline to revise the priority as suggested by the commenter.

Changes: None.

Definitions

Comments: Several commenters requested that we clarify the

definition of "high proportion," as that term is used in Priority 7. One commenter provided data suggesting that the definition of "high proportion" may not be ambitious enough. Conversely, one commenter suggested that we define "high proportion" as 25 percent students who are Indians, consistent with one of the requirements in section 6112 of the ESEA.

Discussion: As discussed above, we are revising Priority 7--Replicating or Expanding High-Quality Charter Schools to Serve Native American Students to replace "students who are Indians" with "Native American students." As written, the priority gives applicants an opportunity to explain why the number of Native American students it proposes to serve constitutes a "high proportion," based on the specific circumstances and context of the community in which the charter school is or will be located. For this reason, we decline to require charter schools to serve a specific percentage of Native American students, such as 25 percent, in order to meet the priority.

We appreciate that some data may suggest that many charter schools have student bodies comprised of 75 percent or more Native American students. Such schools would generally meet the definition of high proportion established in this document. On the other hand, if an

applicant proposes to replicate or expand a charter school that has less than a majority of Native American students but provides a compelling rationale for why the school should be considered to have a high proportion of Native American students, we may consider the applicant to have met the standard. Applicants addressing Priority 7 must, among other things, meaningfully collaborate with Indian Tribes or Indian organizations and must replicate or expand high-quality charter schools that have an academic program purposely designed to meet the unique needs of Native American students. We believe that all of the components of Priority 7, including the definition of "high proportion," set an appropriately rigorous bar for CMO applicants while also affording some flexibility. Therefore, we decline to revise the definition of high proportion as suggested by the commenters.

Changes: None.

Comments: A few commenters suggested that we revise the definition of "Indian" to include Native Hawaiians.

Discussion: We agree that Native Hawaiian students have many of the same unique educational needs as students who are Indians. We also believe that students who are Native American Pacific Islanders have similar educational needs. Therefore, as stated above, we are replacing the terms

"Indian" and "Indian language," respectively, with "Native American" and "Native American language" throughout the final priorities, requirements, definitions, and selection criteria. Likewise, we are removing the definition of the term "Indian" and adding definitions for "Native American" and "Native American language," based on the definitions for those terms in section 8101(34) of the ESEA.¹⁰ The ESEA definition of "Native American" explicitly includes Indians (including Alaska Natives), Native Hawaiians, and Native American Pacific Islanders.

Changes: We have removed the definition of "Indian" and added definitions for "Native American" and "Native American language."

Comments: One commenter suggested that we use the term "Tribal organization" instead of "Indian organization" because "Tribal organization" is the term used in the ESEA.

Discussion: While the term "Tribal organization" is used under several ESEA programs, the term is not defined in section 8101 of the ESEA, which provides general definitions that apply to programs authorized under the ESEA. The term "Indian organization" is used in the

¹⁰ Section 8101(34) defines "Native American" and "Native American language" as having the same meaning given those terms in section 103 of the Native American Languages Act of 1990 (NALA). Under section 103, "Native American" includes Indians (including Alaska Natives), Native Hawaiians, and Native American Pacific Islanders.

authorizing statute for the Department's Indian Education program (20 U.S.C. 7401-7492) and defined in the Department's regulations implementing the Indian Education program at 34 CFR 263.20. We think it is important to maintain consistency with the Indian Education program.

Changes: None.

Selection Criteria

Comments: One commenter suggested that we revise Selection Criterion (b)--Contribution in assisting educationally disadvantaged students to enable the Department to assess better the extent to which an applicant would effectively support students with disabilities. Specifically, the commenter suggested that we add a selection factor focused on attendance rates and outcomes for educationally disadvantaged students, including students with disabilities and English learners, and revise the existing selection factors to focus on effective instructional strategies for educationally disadvantaged students.

Discussion: Two major purposes of the CSP are to expand educational opportunities for educationally disadvantaged students and to assist such students in meeting State academic content and performance standards. As written in the NPP, this selection criterion would enable the Department to evaluate the quality of an application with

respect to achieving these two objectives. While educationally disadvantaged students include students with disabilities, we agree with the commenter that an emphasis should be placed on students with disabilities and English learners because enrollment of such students in charter schools tends to be lower than enrollment of such students in neighboring traditional public schools. Therefore, we are revising the selection criterion to emphasize students with disabilities and English learners.

Changes: We have revised two selection factors in Selection Criterion (b) to sharpen the criterion's focus on serving educationally disadvantaged students. We also have revised the title of the criterion to clarify the focus on the significance of the contribution in assisting educationally disadvantaged students.

FINAL PRIORITIES:

Priority 1--Promoting Diversity.

Under this priority, applicants must propose to replicate or expand high-quality charter schools that have an intentional focus on recruiting students from racially and socioeconomically diverse backgrounds and maintaining racially and socioeconomically diverse student bodies in those charter schools, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal

civil rights laws.

Priority 2--Reopening Academically Poor-performing Public Schools as Charter Schools.

Under this priority, applicants must--

(i) Demonstrate past success working with one or more academically poor-performing public schools or schools that previously were designated as persistently lowest-achieving schools or priority schools under the former School Improvement Grant program or in States that exercised ESEA flexibility, respectively, under the ESEA, as amended by the No Child Left Behind Act of 2001; and

(ii) Propose to use grant funds under this program to reopen one or more academically poor-performing public schools as charter schools during the project period by--

(A) Replicating one or more high-quality charter schools based on a successful charter school model for which the applicant has provided evidence of success; and

(B) Targeting a demographically similar student population in the replicated charter schools as was served by the academically poor-performing public schools, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Priority 3--High School Students.

Under this priority, applicants must propose to--

(i) Replicate or expand high-quality charter schools to serve high school students, including educationally disadvantaged students;

(ii) Prepare students, including educationally disadvantaged students, in those schools for enrollment in postsecondary education institutions through activities such as, but not limited to, accelerated learning programs (including Advanced Placement and International Baccalaureate courses and programs, dual or concurrent enrollment programs, and early college high schools), college counseling, career and technical education programs, career counseling, internships, work-based learning programs (such as apprenticeships), assisting students in the college admissions and financial aid application processes, and preparing students to take standardized college admissions tests;

(iii) Provide support for students, including educationally disadvantaged students, who graduate from those schools and enroll in postsecondary education institutions in persisting in, and attaining a degree or certificate from, such institutions, through activities such as, but not limited to, mentorships, ongoing assistance with the financial aid application process, and establishing or strengthening peer support systems for such

students attending the same institution; and

(iv) Propose one or more project-specific performance measures, including aligned leading indicators or other interim milestones, that will provide valid and reliable information about the applicant's progress in preparing students, including educationally disadvantaged students, for enrollment in postsecondary education institutions and in supporting those students in persisting in and attaining a degree or certificate from such institutions. An applicant addressing this priority and receiving a CMO grant must provide data that are responsive to the measure(s), including performance targets, in its annual performance reports to the Department.

(v) For purposes of this priority, postsecondary education institutions include institutions of higher education, as defined in section 8101(29) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, and one-year training programs that meet the requirements of section 101(b)(1) of the HEA.

Priority 4--Low-Income Demographic.

Under this priority, applicants must demonstrate one of the following--

(i) That at least 40 percent of the students across all of the charter schools the applicant operates or

manages are individuals from low-income families, and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period;

(ii) That at least 50 percent of the students across all of the charter schools the applicant operates or manages are individuals from low-income families, and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period; or

(iii) That at least 60 percent of the students across all of the charter schools the applicant operates or manages are individuals from low-income families, and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period.

Priority 5--Number of Charter Schools Operated or Managed by the Eligible Applicant.

Under this priority, applicants must demonstrate one of the following--

(i) That they currently operate or manage two to five charter schools;

(ii) That they currently operate or manage six to 20 charter schools; or

(iii) That they currently operate or manage 21 or more charter schools.

Priority 6--Rural Community.

Under this priority, applicants must propose to replicate or expand one or more high-quality charter schools in--

(i) A rural community; or

(ii) A community that is not a rural community.

Priority 7--Replicating or Expanding High-quality Charter Schools to Serve Native American Students.

Under this priority, applicants must--

(i) Propose to replicate or expand one or more high-quality charter schools that--

(A) Utilize targeted outreach and recruitment in order to serve a high proportion of Native American students, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws;

(B) Have a mission and focus that will address the unique educational needs of Native American students, such as through the use of instructional programs and teaching methods that reflect and preserve Native American language, culture, and history; and

(C) Have a governing board with a substantial

percentage of members who are members of Indian Tribes or Indian organizations located within the area to be served by the replicated or expanded charter school;

(ii) Submit a letter of support from at least one Indian Tribe or Indian organization located within the area to be served by the replicated or expanded charter school; and

(iii) Meaningfully collaborate with the Indian Tribe(s) or Indian organization(s) from which the applicant has received a letter of support in a timely, active, and ongoing manner with respect to the development and implementation of the educational program at the charter school.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c) (3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an

application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

FINAL REQUIREMENTS:

Applicants for funds under this program must meet one or more of the following requirements--

(a) Demonstrate that the applicant currently operates or manages more than one charter school. For purposes of this program, multiple charter schools are considered to be separate schools if each school--

(i) Meets each element of the definition of "charter school" under section 4310(2) of the ESEA; and

(ii) Is treated as a separate school by its authorized public chartering agency and the State in which the charter school is located, including for purposes of accountability and reporting under title I, part A of the ESEA.

(b) Provide information regarding any compliance issues, and how they were resolved, for any charter schools operated or managed by the applicant that have--

(i) Closed;

(ii) Had their charter(s) revoked due to problems with statutory or regulatory compliance, including compliance with sections 4310(2)(G) and (J) of the ESEA; or

(iii) Had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation.

(c) Provide a complete logic model (as defined in 34 CFR 77.1) for the grant project. The logic model must include the applicant's objectives for replicating or expanding one or more high-quality charter schools with funding under this program, including the number of high-quality charter schools the applicant proposes to replicate or expand.

(d) If the applicant currently operates, or is proposing to replicate or expand, a single-sex charter school or coeducational charter school that provides a single-sex class or extracurricular activity (collectively referred to as a "single-sex educational program"), demonstrate that the existing or proposed single-sex educational program is in compliance with title IX of the

Education Amendments of 1972 (20 U.S.C. 1681, et seq.) and its implementing regulations, including 34 CFR 106.34.

(e) Describe how the applicant currently operates or manages the high-quality charter schools for which it has presented evidence of success and how the proposed replicated or expanded charter schools will be operated or managed, including the legal relationship between the applicant and its schools. If a legal entity other than the applicant has entered or will enter into a performance contract with an authorized public chartering agency to operate or manage one or more of the applicant's schools, the applicant must also describe its relationship with that entity.

(f) Describe how the applicant will solicit and consider input from parents and other members of the community on the implementation and operation of each replicated or expanded charter school, including in the area of school governance.

(g) Describe the lottery and enrollment procedures that will be used for each replicated or expanded charter school if more students apply for admission than can be accommodated, including how any proposed weighted lottery complies with section 4303(c)(3)(A) of the ESEA.

(h) Describe how the applicant will ensure that all eligible children with disabilities receive a free appropriate public education in accordance with part B of the IDEA.

(i) Describe how the proposed project will assist educationally disadvantaged students in mastering challenging State academic standards.

(j) Provide a budget narrative, aligned with the activities, target grant project outputs, and outcomes described in the logic model, that outlines how grant funds will be expended to carry out planned activities.

(k) Provide the applicant's most recent independently audited financial statements prepared in accordance with generally accepted accounting principles.

(l) Describe the applicant's policies and procedures to assist students enrolled in a charter school that closes or loses its charter to attend other high-quality schools.

(m) Provide--

(i) A request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the charter schools to be replicated or expanded; and

(ii) A description of any State or local rules,

generally applicable to public schools, that will be waived, or otherwise not apply, to such schools.

FINAL DEFINITIONS:

Academically poor-performing public school means:

(a) A school identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA; or

(b) A public school otherwise identified by the State or, in the case of a charter school, its authorized public chartering agency, as similarly academically poor-performing.

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, students who are children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care.

High proportion, when used to refer to Native American students, means a fact-specific, case-by-case determination based upon the unique circumstances of a particular charter school or proposed charter school. The Secretary considers "high proportion" to include a majority of Native American students. In addition, the Secretary may determine that

less than a majority of Native American students constitutes a "high proportion" based on the unique circumstances of a particular charter school or proposed charter school, as described in the application for funds.

Indian organization means an organization that--

(1) Is legally established--

(i) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Indian Tribe means a federally-recognized or a State-recognized Tribe.

Individual from a low-income family means an

individual who is determined by a State educational agency or local educational agency to be a child from a low-income family on the basis of (a) data used by the Secretary to determine allocations under section 1124 of the ESEA, (b) data on children eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (c) data on children in families receiving assistance under part A of title IV of the Social Security Act, (d) data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social Security Act, or (e) an alternate method that combines or extrapolates from the data in items (a) through (d) of this definition.

Institution of higher education means an educational institution in any State that--

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 484(d) of the HEA;

(ii) Is legally authorized within such State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which the institution awards a bachelor's degree or provides not less

than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Native American means an Indian (including an Alaska Native), Native Hawaiian, or Native American Pacific Islander.

Native American language means the historical, traditional languages spoken by Native Americans.

Rural community means a community that is served by a local educational agency that is eligible to apply for funds under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the ESEA. Applicants

may determine whether a particular local educational agency is eligible for these programs by referring to information on the following Department websites. For the SRSA program:

www2.ed.gov/programs/reapsrsa/eligible16/index.html. For the RLIS program:

www2.ed.gov/programs/reaprlisp/eligibility.html.

FINAL SELECTION CRITERIA:

(a) Quality of the eligible applicant. In determining the quality of the eligible applicant, the Secretary considers one or more of the following factors:

(i) The extent to which the academic achievement results (including annual student performance on statewide assessments, annual student attendance and retention rates, and, where applicable and available, student academic growth, high school graduation rates, college attendance rates, and college persistence rates) for educationally disadvantaged students served by the charter schools operated or managed by the applicant have exceeded the average academic achievement results for such students served by other public schools in the State.

(ii) The extent to which one or more charter schools operated or managed by the applicant have closed; have had a charter revoked due to noncompliance with statutory or

regulatory requirements; or have had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation.

(iii) The extent to which one or more charter schools operated or managed by the applicant have had any significant issues in the area of financial or operational management or student safety, or have otherwise experienced significant problems with statutory or regulatory compliance that could lead to revocation of the school's charter.

(b) Significance of contribution in assisting educationally disadvantaged students.

In determining the significance of the contribution the proposed project will make in expanding educational opportunities for educationally disadvantaged students and enabling those students to meet challenging State academic standards, the Secretary considers one or more of the following factors:

(i) The extent to which charter schools currently operated or managed by the applicant serve educationally disadvantaged students, particularly students with disabilities and English learners, at rates comparable to surrounding public schools or, in the case of virtual charter schools, at rates comparable to public schools in

the State.

(ii) The quality of the plan to ensure that the charter schools the applicant proposes to replicate or expand will recruit, enroll, and effectively serve educationally disadvantaged students, particularly students with disabilities and English learners.

(c) Quality of the evaluation plan for the proposed project.

In determining the quality of the evaluation plan for the proposed project, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the proposed project, as described in the applicant's logic model (as defined in 34 CFR 77.1), and that will produce quantitative and qualitative data by the end of the grant period.

(d) Quality of the management plan.

In determining the quality of the applicant's management plan, the Secretary considers the ability of the applicant to sustain the operation of the replicated or expanded charter schools after the grant has ended, as demonstrated by the multi-year financial and operating model required under section 4305(b)(3)(B)(iii) of the ESEA.

This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the *Federal Register*.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For Fiscal Year 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and

explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to

make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these final priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory

action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Discussion of Potential Costs and Benefits

The Department believes that this regulatory action does not impose significant costs on eligible entities, whose participation in this program is voluntary. While this action does impose some requirements on participating CMOs that are cost-bearing, the Department expects that applicants for this program will include in their proposed budgets a request for funds to support compliance with such cost-bearing requirements. Therefore, costs associated with meeting these requirements are, in the Department's estimation, minimal.

This regulatory action strengthens accountability for the use of Federal funds by helping to ensure that the Department selects for CSP grants the CMOs that are most capable of expanding the number of high-quality charter schools available to our Nation's students, consistent with a major purpose of the CSP as described in section 4301(3) of the ESEA. The Department believes that these benefits to the Federal government and to State educational agencies outweigh the costs associated with this action.

Regulatory Alternatives Considered

The Department believes that the priorities, requirements, definitions, and selection criteria are needed to administer the program effectively. As an alternative to the selection criteria announced in this document, the Department could choose from among the selection criteria authorized for CSP grants to CMOs in section 4305(b) of the ESEA (20 U.S.C. 7221c) and the general selection criteria in 34 CFR 75.210. We do not believe that these criteria provide a sufficient basis on which to evaluate the quality of applications. In particular, the criteria do not sufficiently enable the Department to assess an applicant's past performance with respect to the operation of high-quality charter schools or with respect to compliance issues that the applicant has encountered.

We note that several of the final priorities, requirements, definitions, and selection criteria are based on priorities, requirements, definitions, selection criteria, and other provisions in the authorizing statute for this program.

Paperwork Reduction Act of 1995

The final priorities, requirements, and selection criteria contain information collection requirements that

are approved by OMB under OMB control number 1894-0006; the final priorities, requirements, and selection criteria do not affect the currently approved data collection.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of the Department published in the *Federal*

Register, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: November 27, 2018.

James C. Blew,
*Acting Assistant Deputy Secretary
for Innovation and Improvement.*

[FR Doc. 2018-26095 Filed: 11/29/2018 8:45 am; Publication Date: 11/30/2018]